IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4621 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIJAYAGAURI,WD/O PRAHLAD DALSUKHRAM SINCE DECEASED

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4621 of 1988

MR PJ YAGNIK for Petitioner No.1/1

MR NITIN N PANDYA for Petitioner No. 1/1

MR RM CHAUHAN, AGP for Respondent No. 1-2

..... for Respondent No. 3

RULE SERVED for Respondent No. 3/1-3/2

MR GIRISH D BHATT for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 07/10/2004

ORAL JUDGEMENT

The original petitioner, namely, Smt. Vijayagauri wd/o Prahlad Dalsukhram has filed this petition under Article 226 of the Constitution of India challenging the notices dated 31.05.1988 and 17.06.1988 issued by the Deputy Town Planning Officer, Ambaji Area Development Authority, Himmatnagar and prayed for quashing and setting aside the said notices. The petitioner has also prayed for the modification of the scheme so as to allow the petitioner to retain Final Plot No. 21 (Out of City Survey No. 63/paiki) of T.P. Scheme No. 2, Ambaji.

2. The petition was admitted on 27.03.1991 and ad-interim relief granted by this Court earlier was continued till further order.

3. During the pendency of the petition, the petitioner expired and hence, by an order dated 19.01.1998 passed by this Court in C.A. No. 4160 of 1997, legal representative, namely, Shri Jagdishchandra Chandulal Raval was brought on record and the petition was amended accordingly.

4. Originally, learned advocate Mr. Nitin N. Pandya was appearing on behalf of the petitioner. Since he has permanently settled in U.S.A., learned advocate Mr. P.J. Yagnik has filed his appearance on behalf of the petitioner. On 30.09.2004, Mr. Yagnik has submitted that he has already handed over the papers to the petitioner and intimation was also given on 23.09.2004 to the effect that hearing was fixed on 30.09.2004 and he has also informed the petitioner to make necessary arrangement to represent his case on that day. On 30.09.2004, nobody appeared on behalf of the petitioner and Mr. Yagnik has again made the said submission. On his request, the matter is fixed for final hearing today. On all earlier occasions, learned A.G.P. appearing on behalf of respondents No. 1 & 2 was present and Mr. G.D. Bhatt, learned advocate appearing for the respondent No. 4 was also present.

5. The main grievance raised by the petitioner in this petition is that in the draft Town Planning Scheme, the land of the petitioner was reserved for public purpose and the said land was given Final Plot No. 21. The petitioner was allotted in exchange, Final Plot No.

29 admeasuring 170.13 Sq. Mtrs. However, when the Preliminary Scheme was sanctioned by the State Government, the land belonging to the petitioner out of Nondh No. 63/paiki Final Plot No. 21, has been directed to be handed over, in exchange, to one Mr. Dhulachand Rupchand, the respondent No.3. The land of the respondent No.3 is admeasuring about 117 Sq. Mtrs. and it is hardly 250 Feet away from the petitioner's land. The notices were challenged on the ground that the action was arbitrary, discriminatory and in violation of the provisions contained under Section 52 (3) of the Act.

6. Mr. R.M. Chauhan, learned A.G.P. appearing for respondents No. 1 & 2 has submitted that during the pendency of this petition, the Town Planning Officer, incorporated the decisions of the Board of Appeal, appointed under Section 55 (1) of the Gujarat Town Planning and Urban Development Act, 1976 and submitted the Town Planning Scheme No.2 Ambaji (Final) on 02.03.1995 to the Govt. for sanction under Section 64 of the Act. The Government has sanctioned the Final Scheme under Section 65 (1) of the said Act under Urban Development and Urban Housing Dept.. Notification No. GH/V/10 of 1997/TPS/2195/709/L dated 17.01.1997 and brought Final Scheme into force from 18.02.1997. Since the Final Scheme has come into force, as per the provisions contained in Section 65 (3) of Gujarat Town Planning & Urban Development Act, 1976, the same shall have effect as enacted in this Act.

7. Mr. G.D. Bhatt, learned advocate appearing for the respondent No.4 i.e. Ambaji Temple Trust has submitted that in view of the final sanction of the Town Planning Scheme, the present petition would not survive as in the present petition, only the notices were challenged by the petitioner and the petitioner's grievance against the final Town Planning Scheme would not be tenable in view of the binding effect of the Scheme.

8. After having heard learned advocates appearing for the respective parties and after having gone through the record, the Court is of the view that since the Town Planning Scheme has already been finalised, the challenge to the notices has become unsustainable. By virtue of the interim order passed by this Court on 27.03.1991, the possession of the petitioner's plot could not be taken till this date. Looking to the binding effect of the

Scheme and the decided case law on the subject, the petitioner is not entitled to any relief in this petition. The petition is, therefore, dismissed. Interim relief granted earlier is vacated. Rule discharged without any order as to costs.

[K.A. PUJ, J.]

#Savariya#

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